(1) Supreme Court, U.S.
FILED

031285 JAN 23 2004

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2003

No. _____

"In re
REGGIE D. HUFF AND LISA G. HUFF

Petitioners"

v.

SUSAN P. GRABER, RONALD M. GOULD
AND RUGGERO J. ALDISERT,
Circuit Court Judges for the 9th Circuit

Respondents

THE ROBERT JACKSON FAMILY TRUST; L. B. LAND, an Oregon corp.; JDH SERVICES INC., an Oregon corp.; JOHN D. HALLSWORTH, JR.;ROBERT K. JACKSON; LUANN JACKSON; RODERICK A. BOUTIN,

Co- Respondents

PETITION FOR WRIT OF MANDAMUS AGAINST 9th CIRCUIT PANEL

(Oral Arguments Requested)
(Expedited Procedure Requested)

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QUESTION PRESENTED ON FACTUAL ALLEGATION FOR DETERMINATION

1. Did the Ninth Circuit Panel in question fail to exercise its mandated jurisdiction by failing to perform the minimum tasks defining a "hearing" of properly appealed subject matter, depriving petitioners (appellant/plaintiffs) of constitutionally mandated equal protection and due process? (*U. S. Constitution*, 14th Amendment, Section 1)

CORPORATE DISCLOSURE STATEMENT

Petitioners declare that none of them is a non-governmental corporate party, nor are there subsidiaries or affiliates that have issued shares to the public.

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TABLE OF ABBREVIATIONS

AP = **APPENDIX**
ER = **EXCERPT OF RECORD** in lower court –
(Referenced but not included)

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CITATION TO OPINIONS BELOW

Reggie D. Huff and Lisa G. Huff pray that the Supreme Court grant the extraordinary Writ petitioned for within.

The Ninth Circuit Panel in question failed to exercise it jurisdiction as required by law and the 14th Amendment to the *U.S. Constitution*. (*U.S. Constitution*, 14th Amendment, Section 1)

The mandate objected to is based on two (2) irregular unpublished Memorandum Opinions, which are:

> "Memorandum" to Ninth Circuit Court of Appeals Case #02-35176, Filed September 30, 2003, (AP 47), and;
>
> "Amended Memorandum" to Ninth Circuit Court of Appeals Case #02-35176, Filed November 24, 2003, (AP73).

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JURISDICTION

This court has jurisdiction to issue an extraordinary Writ of Mandamus to the Ninth Circuit Court of Appeals and/or the subject Ninth Circuit Panel pursuant to 28 USC § 1651(a) as to appellate jurisdiction and/or Article III, Section 2 of *U.S. Constitution* as to original and appellate jurisdiction.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

AMENDMENT XIV– Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USC § 1291. Final decisions of district courts:

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 USC § 1651 Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice of a court which has jurisdiction.

STATEMENT OF CASE

PREAMBLE TO EXTRAORDINARY WRIT

The 9th Circuit Panel that is subject to this *Writ of Mandamus* proceeding has willfully and repeatedly violated Petitioners legal and constitutional rights in an extraordinary manner that is directly subject to the oversight jurisdiction of this Supreme Court.

Petitioners do not foolishly contemplate a right to a perfect appeal. Nor is this a matter of misapplication of the *Writ of Certiorari* process. This is a fact based matter involving the willful, and repeated refusal to perform an actual FIRST "hearing" in a case in which appellants' "right" to be heard is not in dispute.

On the face of the record it is noteworthy that:

1. **The Petitioners first charged and proved that the Panel failed to perform a first "hearing" in a petition for rehearing, (AP 51). The Panel denied rehearing and instead amended its *Memorandum* in a manner that effectively stipulates to the charge, (AP 73).**
2. **The *Amended Memorandum* now AFFIRMS "*Summary Judgment*". Incredulously the subject case was illegally dismissed at the *initial pleading stage*, and no answer to the nearly 30 crimes charged and pled has ever occurred. The Panel's *Final Disposition* actually AFFIRMS a "*Judgment*" that does not exist, (AP 74 & 77).**
3. **The appellate Panel has stipulated to reversible error, (AP 75, Section 2, 2nd sentence) in context with the District Court's permanent and binding *Final Disposition,* and yet the case remains technically affirmed.**
4. **The Appellate Panel dispensed with oral argument after it had been scheduled and all parties notified, and against Appellants' wishes.**

Within the pages of this petition Petitioners provide overwhelming proof of facts showing that 9th Circuit Court Judges **Susan P. Graber, Ronald M. Gould,** and **Ruggero J. Aldisert** all

agreed to deprive appellants of their legal and constitutional rights by:

- repeatedly and willfully refusing to read or consider any relevant portion of the central document to said appeal, namely the *Appellants' "Second Amended Complaint (corrected)"*, alleging copious and serious criminal offenses directed against appellants;
- repeatedly and willfully refusing to read or consider any relevant portion of *Appellants' Briefs*, both *Opening* and *Reply*, as well as *Appended Authorities*; and, most incredulously;
- repeatedly and willfully refusing to read or consider any relevant portion of the District Court's first "*Opinion*", (AP 3) and its binding *Disposition,* in context with its *Second Opinion*, (AP 20).

In every respect relevant to this charge the appellants were repeatedly and willfully cut out of the process. The entire proceeding is a legal sham, in which the only parties allowed to be "heard" are the non-moving parties, and the *Final Dispositions*, both initial and "*amended*", are merely procedural facades.

Petitioners further prove that this conduct has resulted in damage, where the outcome would be opposite, but for said willful failure to exercise legally mandated jurisdiction.

Petitioners further prove that the instant case contains all of the elements, in quintessentially accurate form, indicating an extraordinary *Writ of Mandamus* matter worthy of this court's attention.

May it please the court and its eminent authority, this is not a frivolous matter.

"PAYING LITIGANT" STATUS

There can be no doubt that the respondents violated Petitioners' right to be heard. The main reason appears to be pro se profiling. When brought to their attention, the Respondent Panel simply sought to cover the misdeed without concern to justice.

It now appears that the pro se status can mean automatic death to ones case, without regard to individual facts and/or circumstances. Therefore Petitioners prefer to be referred to as "Paying Litigants".

In 1991 this court issued a per curiam opinion regarding frivolous filings. (See Per Curum Opinion U.S. Supreme Court, 114 L. Ed. 2d 15, 111 S. Ct. 1572.) In that opinion this court made a distinction between in forma poupous pro se litigants and "paying litigants". The Petitioners have hired multiple attorneys at a cost of many tens of thousands of dollars, and have paid all court fees, up to and including this case, out of pocket. Petitioners are in debt as a result.

Besides the "control" effect of the RICO enterprise depleting our resources, we have been betrayed by multiple attorneys in the past, directly related to the underlying case. One attorney, Douglas Combs (OSB 67020), actually racked up 12 incidents of mal practice in a single year. The Professional Liability Fund (PLF) literally threw money at us, pro se, for only one of those instances of mal practice in exchange for waiving future claims. The PLF has a reputation of being impossible to get money out of, even when represented by counsel. We were not aware of all the other instances of mal practice until shortly later. Some of the misconduct is criminal in nature and deserving of outright disbarrment and incarceration.

Many pro se litigants are convicted criminals or illegal aliens. For the record, Petitioners are the exact antithesis. Petitioners have never been charged with a crime, and, in fact, claim, with FBI quality evidence, to be victims of massive crime and corruption.

We are completely justified in the present status, albeit not the preferred status. The ***Constitution*** is designed to protect us, and our property, and we should not be discriminated against as a direct result of the conduct of opponents, attorneys, and judges we have no control over.

LEGAL STANDARD FOR EXTRAORDINARY WRIT

The main criteria for granting a *Writ of Mandamus* are outlined in *Supreme Court Rule 20*. They are:

1. The petition must show that the writ will be in aid of the court's appellate jurisdiction.
2. Exceptional circumstances are present, and,
3. Adequate relief cannot be obtained in any other form from any other court.

JURISDICTIONAL AID

Congress enacted the "right" to a full and actual review or "hearing" of "all final decisions" from District Courts in 1951. (28 USC 1291. See also Carroll et al. v. United States, 354 U.S. 394.) The Supreme Court has jurisdiction over the entire federal court system, but exercises more direct authority over the Appeals Courts. (See In re Bladget (1992)502 U.S. 236, 116 L. Ed. 2d 669, 112 S.Ct. 674 92 CDOS 429, 92 *Daily Journal DAR* 562, and 23 *Moore's Federal Practice* (Matthew Bender 3d ed.) §§ 520.02[2], 28 USC § 1651, *U.S. Constitution*, Art. III, Sec. 2.)

The Supreme Court has repeatedly upheld that any appellate system, though statutorily created, falls under constitutional mandates. This is mainly related to the 14th Amendment. Therefore, an actual "hearing" on review of a federal court decision has been deemed, by extension, to be an absolute constitutional right.

> (See Douglas v. California, 372 U.S. 353 and Evitts v. Lucey, 469 U.S. 387: "(b) When a State opts to act in a field where its action has significant discretionary elements, such as where it establishes a system of appeals as of right although not required to do so, **it must nonetheless act in *388 accord with the dictates of the *Constitution***, and, in particular, in accord with the Due Process Clause. P. 838.".)(Emphasis supplied.)

Where an appellate court refuses to recognize that right the Supreme Court has absolute authority to step in and compel recognition of that right. Some form of action is necessary to ensure

the integrity of the system. (Kerr v. United States District Court for Northern District, (1976) 426 US 394, 96 S. CT. 2119)

Congress expects the 'right to be heard' to be honored at all times, and has essentially put the Supreme Court in the position of guaranteeing that the minimum task is actually performed in all cases in which the appellants have met the minimum statutory requirements in claming that right.

Any case directly related to rights under appellate jurisdiction provides a most exceptional aid in Supreme Court jurisdiction.

To clarify, Petitioners do not construe that an absolute right to an actual "hearing" is a right to a perfect review, with no errors, although that certainly is to be the goal. Rather, coming to the wrong disposition as a direct result of repeatedly and willfully failing to perform the minimum tasks that define an actual "hearing" is what acts as an actual violation of appellants absolute rights.

This case may provide the court a rare opportunity to define what minimum tasks actually accomplish a "hearing". This definition is especially necessary in an age where oral arguments are routinely denied and litigants are denied any means to ensure that a minimum synopsis of one's case is actually exposed to any, let alone all three, judges on an appellate panel. [1]

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[1]The *standards relating to appellate courts*, ABA Commission on Standards of Judicial Administration, Sec. 3.35, pp. 56-57 (1977), found:

> "Oral argument is an essential part of the appellate process. It contributes to judicial accountability, it guards against undue reliance upon staff work, and it promotes understanding in ways that cannot be matched by written communication. It assures the litigant that his case has been given consideration by those charged with deciding it. The hearing of argument takes a small proportion of any appellate court'' time; the saving of time to be achieved by discouraging argument is too small to justify routinely dispensing with oral argument."

(See also "Appellate Practice in the United States", Ch. 13, 366-367)

EXCEPTIONAL CIRCUMSTANCES

This case presents exceptional issues of significant public interest.

At issue is whether ultimately the largest circuit court in the federal court system failed repeatedly and willfully to exercise its mandated jurisdiction over a RICO case involving sworn allegations of prolific organized crime spanning many years.

This failure may be indicative of problems within the Ninth Circuit that have received massive publicity and have spawned national debate in recent months. Movements are afoot at this very time to split the court up for reasons that may be relevant to this mandamus action.

Did the Ninth Circuit fail to exercise its jurisdiction due to:

- excessive workload, **or**
- bias against pro se litigants, **or**
- bias against pro se litigants fueled by an excessive workload, **or**
- bias in favor of certain select causes?

Michael Newdow, (see Newdow v. U.S. Congress, 292 F. 3d 597), a recent pro se civil appellant in the Ninth Circuit, is an atheist who wishes to have references to God removed from public attachment. A review of Mr. Newdow's case reveals an extraordinary accommodation of his subject matter, despite his inexperienced pro se status.

The national public needs to know if the Ninth Circuit will be allowed to arbitrarily assign special rights to atheists while simultaneously abridging the constitutional rights of crime victims. All United States citizens need the assurance that the system is able to reign in the largest circuit court to protect all U. S. citizens

By this we are not referring to Mr. Newdow's subject matter. We are talking about one pro se litigant receiving an inordinate amount of court resources and attention, amounting to a special right to be heard, while other pro se litigants, just as deserving, receive no effective application of court resources. This

results in an abridgment of the right to be heard. (See Kerr v. United States District Court for Northern District, (1976) 426 US 394, 96 S Ct 2119, "Writ of mandamus has traditionally been used in federal courts only to confine inferior court to lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.")

Petitioners' underlying cause itself is exceptional as well.

The case is one of the "quasi-criminal" civil RICO nature. (See Sedima, 473 U.S. 479, 493.) Please turn to page 53 of the *Appendix* and read the subsection entitled "Statement of Serious Nature of the Case at Bar".

For the Petitioners, saving the right to assert RICO claims is not a matter of preserving some opportunity for financial recompense, as much as arresting criminal empowerment, which is currently being employed to continually victimize the Petitioners and approximately 150 other U.S. citizens, and puts the community at large at risk.

When the courts deliberately and/or negligently fail to enforce congress' intent, as in this instance, the exact opposite occurs. Racketeers are actually highly empowered, and the power of the court itself becomes an extension and tool of the criminal enterprise. So far, the accused criminal enterprise has been able to acquire huge judgments against its victims without answering a single charge.

The Ninth Circuit itself has entered a large money judgment against Petitioners "property" without "due process", creating unequal "protection". (***U.S. Constitution***, 14th Amend., Sec. 1)

The District Court's actions in this case, including a large money judgment, are highly suspect at a minimum, (AP 53.) Both courts failed to even attempt to identify a single FOMAN Factor. (See FOMAN, 371 U.S. 178, also Firestone v. Firestone, 76 F.3d 1205 (D.C. Cir. 1996), Jarrel (pro se) v. United States Postal Service, 753 F.2d 1088, 1091 (D.C. Cir. 1985), Eminence Capital v. Aspeon, Inc., 316 F.3d 1048 (9th Cir. 2003)).

This is a truly rare and extraordinary case because:

1. The subject Circuit Court Panel's conduct is unusual, especially in context with a serious Federal RICO matter.
2. It is even more rare that smoking gun evidence would be available to support the unusual charges in this suit.
3. Given #1 & #2 above it is even more rare that circumstances would allow for proof of serious damage as a direct result of the charged conduct.
4. Given #1, #2, and #3 above, most attorneys would still not take this action purely out of fear of damage to ones career before the judiciary.

LAST RESORT

The 9th Circuit Panel entered a *judgment* of affirmation on September 30, 2003. The Petitioners filed a *Petition for Rehearing* on October 14, 2003, (AP 51). On November 24, 2003 the appellate Panel issued an *order* denying rehearing and acceptance of any further petitions, (AP 71).

The only options left for the Petitioners is to pursue a Writ of Certiorari or a Writ of Mandamus in this court. However, the Petitioners argue that the Panel failed to conduct an actual hearing in the case and have deprived Petitioners of the normal, yet very slim chance for Certiorari. In addition, no oral argument was allowed and no opinion was issued. As a direct result of the conduct of the Panel in this case the *Writ of Certiorari* is a non-option, which has virtually no chance of correcting the violation of a fundamental "right".

Despite the fact that this court has the power to treat this petition as one of Certiorari, this case squarely fits the criteria for a *Writ of Mandamus.* A *Writ of Mandamus* may be subject to the principle of latches. Petitioners cannot risk denial on the basis of untimeliness after pursuing a *Writ of Certiorari.*

Therefore it is clear that adequate relief cannot be sought in any other form in any other court. (See Ex Parte Fahey, 332 U.S. 258, 260, 67 S. CT. 1558 (1947), " These remedies should be resorted to only where appeal is clearly inadequate remedy.")

PROCEDURAL HISTORY

On **March 15, 2002** Petitioners/Appellants filed their Reply Brief in the 9th Circuit. Petitioners did not request oral argument because at that time it was not understood how important oral argument is in promoting "Judicial Accountability." (See *Appellate Practice in the United States*, Ch. 13, 366-367.)

However, on **December 5, 2002** the court, on its own, decided the court should hear oral argument and sent a letter to Petitioners stating so, (AP 42).

On **June 24, 2003** Petitioners wrote a letter to the court thanking them for scheduling oral argument and stating basically that oral arguments would be requested if it had not already been decided by the court, (AP 43).

On **July 22, 2003** the court sent notice of a schedule for oral argument that scheduled our case for **September 12, 2003**, (AP 44).

Based on this, Petitioners purchased two non-refundable airline tickets at a cost of approximately $550.00.

On **August 26, 2003** a clerk named Marion Formen called to inform us that the court had changed its mind and decided not to take oral argument, (AP 45).

On **August 27, 2003** Petitioners filed by fax a *Motion to Reconsider* the decision to not take oral arguments.

On **August 28, 2003** the court summarily denied the motion, (AP 46).

On **September 2, 2003** Petitioners filed a very new, on point *Supplemental 9th Circuit Authority* reinforcing strongly that FOMAN disallows merely counting the pleading attempts in determining futility beyond all doubt. That authority is Eminence Capital v. Aspeon, Inc., 316 F.3d 1048 (9th Cir. 2003).

On **September 12, 2003** Petitioner Reggie Huff attended proceedings in Portland, Oregon where the subject Panel took oral arguments in other cases.

On **September 30, 2003** the Panel produced a so-called "*Memorandum*" affirming the District Court's dismissal with prejudice, (AP 47).

On **October 14, 2003** Petitioners were forced to file a provocative *Petition for Rehearing*, (AP 51).

On **November 24, 2003** the Panel issued an Order claiming that by amending the *Memorandum* denial of rehearing is justified, and it was so ordered. On that same day the Amended Memorandum was filed, (AP 71 & 73).

Petitioners subsequently filed a motion to "Stay Mandate", a motion to "Recall Mandate", a motion to "Clarify Amended Memorandum", a motion to "Clarify Judgment", a motion to "Reconsider Order Denying Recusal of Panel", and a motion to "Return Court Fees". (Due to the volume of the *Appendix* these documents are not supplied at this time.)

On **January 8, 2004** the Panel essentially "construed" the variety of motions as one "motion for leave to file" and summarily denied them all, (AP 78).

REASONS FOR GRANTING WRIT: Charges, Facts, and Proof

NOTE: Due to the volume of the *Appendix* Petitioners chose at this stage not to include all of the *Appellants Briefs* or the *Second Amended Complaint (corrected)* as part of the *Appendix*. *Appellants' Opening Brief* included many relevant arguments and authorities that are unique to the Petitioners. However, Petitioners sought to augment the main body of the *Opening Brief* with former federal prosecutor and RICO attorney David Adler's *Motion for Reconsideration*, and that of Reggie Huff, in the following manner:

> "It is my intent to keep arguments brief and to avoid redundancy where the record can be relied on to speak for itself.
>
> "The issues surrounding the dismissal judgment itself are well covered in Plaintiffs' *Motions for Reconsideration* (ER 172, 176, 205, & 221). Therefore, as I intend to rely on this part of the record in regard to the dismissal judgment, in conjunction with a synopsis of the nature of the dismissal that follows below, I wish to include said motions and their supporting memorandums as part of this

brief under this subheading as if set out in full." (From Appellants' Opening Brief, Ninth Circuit Case No. 02-35176.)

The said *Motion for Reconsideration* authored by David Adler is included in the *Appendix* starting at page 29. Any question as to solidarity among trained counsel regarding the illegal and erroneous nature of the District Court's judgment is clearly answered by reading this document. **(*End of* "NOTE".)**

In the 9th Circuit Court of Appeals case No. 02-35176 Appellants filed the final "Reply" brief on March 15, 2002.

At that point no party had requested oral arguments and the cover on *Appellants' Opening Brief*, (AP 40), clearly indicated that Appellants were "pro se", and in bold letters above the brief title invoked "informal" status as allowed by rule. (FRAP 28-1(c).) Informal status was invoked on briefs that clearly were otherwise formal, merely as insurance against inexperience.

Not to be unexpected, due to the "informal pro se" status all parties were sent a letter from the court on August 5, 2002 stating in part the following:

> **"The United States Court of Appeals for the Ninth Circuit is considering submission of your case without oral argument. You have ten (10) days from the date of this letter to present a statement setting forth the reasons why oral argument should be heard in this case. See FRAP 34(a)(2). Please send an original and three (3) copies of your statement to Clerk's Office in San Francisco, and show proof of service to opposing counsel."**

No party responded to the letter.

On December 5, 2002 the 9th Circuit sent all parties another letter stating in part the following:

> **"Upon further consideration, the court has decided that your case should be reassigned to an oral argument panel."** (AP 42)

When considering the fact that no party requested oral arguments it is clear that some internal screening process had looked

past the "Informal Pro Se" status and at the case itself. In so doing it was obvious that the underlying case was not a frivolous matter.

On June 22, 2003 Appellants sent a letter to the court thanking it for treating the case with proper seriousness and apologized for not formally requesting oral argument, while recognizing its importance, (AP 43).

On July 22, 2003 all parties were sent a "Hearing" schedule that scheduled case No. 02-35176 for oral argument on September 12, 2003 in Portland, Oregon, (AP 44). It appears, by case number, that Petitioners' case was the oldest case on the docket that day.

Petitioners purchased non-refundable tickets to Portland, Oregon at a cost of approximately $550.00.

Sometime in late August 2003 someone on the assigned Panel viewed the case for the first time. The cover to Appellants' otherwise formal brief indicated an "informal" "pro se" status. Discriminatory bias gave way to visions of a short work day and the decision was immediately made, without review, that the case was frivolous and undeserving of oral argument or an opinion. This conduct caused extreme prejudice against the Appellants and favored only the Appellees and the District Court.

Without oral argument Appellants have no way to ensure any, let alone all, of the judges on a panel are exposed to any relevant portion of Appellants' case. Several law reviews on oral argument in appeals recognize its value in promoting "judicial accountability." (See *Appellate Practice in the United States*, Ch. 13, 366-367.)

We were immediately convinced that the Panel intended to shortcut the process to our detriment. Appellants desperately attempted to change the Panel's mind and drafted a motion in one day entitled "*Motion for Reconsideration of Order for Case Submission Without Oral Argument*." It was accepted for fax submission on August 27, 2003.

The motion was summarily denied and an order was filed the very next day, (AP 46).

On September 2, 2003 we submitted a new 9th Circuit authority that wholly supports arguments and authorities in

Appellants' Briefs. The authority sets up a prohibition in the 9th Circuit against dismissal with prejudice without identifying any FOMAN factors. (See Eminence Capital v. Aspeon, Inc., 316 F.3d 1048 (9th Cir. 2003).) The record before this court is clear. Both lower courts have utterly failed to identify any FOMAN factors or any part thereof.

Petitioner Reggie D. Huff chose to use the nonrefundable airline ticket and fly from Warren, Ohio to Portland, Oregon to attend the oral argument session scheduled for September 12, 2003.

I witnessed the entire proceeding on September 12, 2003. (See *Affidavit* on page 27-29 of this document.)

Judge **Susan P. Graber** acted as the presiding judge. Judge **Ruggero J. Aldisert** appeared tired and disengaged for most of the session. Judge **Ronald M. Gould** appeared to be the most engaged and interested.

Judge **Susan P. Graber** mentioned that our case and a few others would be taken on the briefs.

Judge **Susan P. Graber** also commented with some glee that she was hopeful to close the proceeding hours ahead of schedule, and, in fact, she was able to do so. This left Petitioners with an understandable bad taste. It would appear to the public that a Circuit Court judge's work load is dependent on how many cases can be preordained to be so-called frivolous or otherwise unworthy of serious consideration, and the pay is the same.

The Charges

9th Circuit Court of Appeals Judges:

Susan P. Graber
Ruggero J. Aldisert
Ronald M. Gould

(the Panel) collectively agreed to willfully and repeatedly and continually refuse to "Hear" or allow themselves to be exposed to any relevant portion of Petitioner/Appellants' case.

The Panel collectively knew, and, in fact, knows that Appellants have met all statutory requirements for an "appeal as of right".

The Panel knew and knows that the right to an appeal is subject to 14th Amendment mandates.

The Panel knew and knows that all judges have an absolute requirement to hear all "persons" and/or their lawyers that have that right.

Further, the Panel collectively and individually knew and knows that every code of judicial conduct recognizes this requirement and that it is fundamental to the function of an incorruptible and fair judiciary.

The Panel collectively and individually knows that their conduct results in a strict violation of Petitioners' fundamental rights and this conduct alone is to blame for forcing Petitioners to take extraordinary, expensive, and time consuming measures to protect those rights.

The Panel knows that this conduct acts as extreme prejudice against victims of crime, (AP 53-55). (So stated because all allegations in the pleading must be taken as true.)

The Panel knows its conduct alone is responsible for forcing Petitioners to take extraordinary measures that are inflammatory to them personally.

The Panel knows that these circumstances require them to order a complete rehearing and their subsequent recusal. Yet the Panel willfully, repeatedly, and continually refuses to do so.

The Panel knows the Petitioners have a right to be heard by an objective and unbiased judiciary and that they are in constant violation of this right as well.

The Panel knows they have not performed an "Appeal" or a "Hearing" in case #02-35176, as is required by law.

The Facts

On September 30, 2003 the Panel filed its first of two Memorandums, (AP 47).

An overview of this document reveals the following facts:

1. A footnote on page 2 indicates the decision to avoid the judicial accountability of oral argument by de-scheduling previously scheduled oral argument was agreed to collectively.
2. The document does not recognize the recusal of District Court Judge Garr M. King, (AP 53), or the appointment of Ancer L. Haggerty to subject matter under appeal.

Appellants' Opening Brief clearly delineates this relevant information from its cover and throughout. Therefore the Panel improperly attributes the ruling on attorneys fees to District Court Judge Garr M. King. The proper case identification is presently CV-01-447 HA, ***not*** CV-01-447 KI, as indicated on the Panel's *Memorandum*.

The Appellees' Briefs do not clearly delineate which judge ruled on what issue. Only Appellants' so-called "informal" brief does this.

The Panel did not consider or even read Appellants' case.

3. The entire document from top to bottom is devoid of a single word indicating that a single argument, fact, or authority unique to the Appellants was considered or even read.

Sections 1-4 are nothing more than a near plagiaristic rewrite of Judge King's *Second Opinion*, which is easily notable paragraph after paragraph.

The Panel threw in three case citations unique to its Memorandum. Two of the cases are merely generic affirmation tools. One is a 13 year old 9th Circuit case that is used repeatedly whenever a panel simply wishes to ignore U.S. Supreme Court mandates under FOMAN. That case has been shown to be useless in repleading analysis by a 9th Circuit 2003 case that was provided to the Panel before submission. (See Eminence Capital v. Aspeon, Inc., 316 F.3d 1048 (9th Cir. 2003).) The third case is a 6th Circuit case that provides no cognizable support for the set of facts in this case whatsoever.

Section 5 of the Memorandum is parroted from Appellees' Briefs.

The entire document demonstrates a complete exclusion of Appellants' case, not limited to and including the following examples:

a. The District Court failed repeatedly to identify any FOMAN factors in denying repleading. The District Court also refused to acknowledge information provided in Plaintiff Reggie D. Huff's Motion for Reconsideration, which proved outright that repleading would be successful under the District Court's Disposition. These facts are Discussed at AP 65.

Appellants made a substantial and extremely well supported case for reversal on this matter. Appellants provided many case authorities, including FOMAN and a D. C. Circuit Case, Jarrel (pro se) v. United States Postal Service, 753 F.2d 1088, 1091 (D.C. Cir. 1985), in which the D. C. Circuit reversed in favor of a pro se civil litigant over the U.S. Post Office and a formidable legal team, purely due to failure to identify any FOMAN factors.

Further, the Appellants showed that the District Court's count of pleading attempts was false and misleading, and, in fact, Judge King's own footnote #1 in his *Second Opinion* contradicts his statement regarding four pleading opportunities, (AP 22 & 63).

In addition, Appellants provided a contemporary Ninth Circuit authority, Eminence Capital v. Aspeon, Inc., 316 F.3d 1048 (9th Cir. 2003), well before case submission, in which the Ninth Circuit rebuked the mere counting of pleading attempts as an adequate basis under FOMAN to deny repleading.

Also, Appellants proved that the District court had shifted its pleading requirements and disposition 180 degrees between its *First and Second Opinions*. Judge King's statement that he had 'provided clear direction in repleading' was clearly false, as he had actually provided clear misdirection and had created a pleading trap in the process. This is self-evident by simply reading the two opinions, which the Panel failed to do.

The Panel did not even read the District Court's *First Opinion*, and certainly did not read the *Appellants' Briefs* or the *Second Amended Complaint* itself. Therefore its ruling on this issue merely parrots the District Court's *Second Opinion*. (See Section 3, *Memorandum*, AP 50 & 76.)

b. The District Court made an illegal conclusion of fact regarding a stock purchase that was clearly refuted in the *Second Amended Complaint* in the *Appellants' Brief* and in several *Motions for Reconsideration* on the record before the Panel (ER 189-191).

The Panel simply parroted the District Court's illegal conclusion of fact, (AP 49 & 75), with no argument indicating knowledge of the repeated and well supported facts against it available throughout the Appellants' case and the record before the Panel.

The Panel was unaware of these facts because it never considered or even read any relevant portion of Appellants' case.

c. The Panel claims that only three (3) courses of conduct resulting in illegal control of the victim enterprise was alleged, (AP 49 & 75). In fact, eight (8) courses of conduct were alleged. The most prolifically detailed, disturbing, and factually supported courses of conduct throughout the record are completely missing from the Panel's view, because they only read the District Court's *Second Opinion*. Even the reading of the District Court's *First Opinion* alone proves this point outright, (AP 3-19). This issue is discussed in detail later in the *Damage* section.

4. The Appellees/Co-Respondents decided to restate Appellants' "issues presented on appeal" in a manner that suited their purposes.

Appellants stated #2 and #4 of seven (7) issues as follows:

> **"(2) Did the District Court err in its application of pleading requirements exceeding FRCP 8(a) at the**

court ordered instantly fatal mid-trial point creating prejudice to Plaintiffs?"

"(4) Did the District Court abuse discretion under FRCP 15(a)?"

The Appellees reshuffled the issues to equal the same number of total issues, yet issue #2 above is completely missing, and issue #4 is apparently restated and renumbered as follows:

Appellees' Brief - #1

"(3) Did the District Court abuse its discretion in denying Lisa Huff and Reggie Huff in dismissing the Second Amended Complaint with prejudice by the January 2, 2002 order?" (Exact quote)

This, of course, makes no sense, which we believe was intentional. Issue #(2) was completely ignored by the Panel because it did not even know of its existence. The Panel deliberately failed to consider the issues as presented by the Appellants themselves by failing to consider or even read any relevant portion of Appellants' case.

Issue #2 is a legitimate issue in this case, and one the Appellees would like to have ignored, to further prejudice the Appellants. Looking at Appellees' self-serving restatement of the issues alone amounts to failing to allow Appellants to be heard, and results in no hearing of that issue.

Thus far the evidence shows clearly that the Panel has, in fact, violated Appellants' rights in the first instance. The Panel simply assumed what minimum issues it must cover and attempted to cover them by reading only a portion of the *Appellees' Briefs* and the District Court's *Second Opinion*. This approach led to a large crack in its procedural façade and the most compelling prima fascia proof of the charge against them today.

The Panel assumed that the appeal was limited to a dismissal judgment with prejudice. Dismissal judgments have a routine to

them involving interpretation of law and right to replead. This is clearly reflected in the *Memorandum* façade.

In this case, however, Appellants included the *Final Orders Denying Reconsideration and Relief From Judgment* in the *Notice of Appeal*, and on the *Briefs*, etc. This made those orders a non-discretionary issue involving an "Appeal as of Right". The Panel treated this as a sub-question and ignored it. In fact, the Panel did not know the status of the issue because it did not read any portion of the Appellants' case, (AP 60-63).

Taking all this in at one time, it was absolutely clear that the assigned Panel had committed itself to an illegal and unjust course of denying us our right to be heard. At that point we knew for a certainty that any normal, semi-pandering style petition for rehearing would be summarily denied without one relevant word being read. Therefore we would have to give the petition a provocative title and create a slim chance that it would be read and hope that it might lead to a rehearing before another, hopefully unbiased, panel. The Panel put us between no chance and a very slim chance, where its own conduct would likely lead to bias against us and against justice.

The Panel, offended and angry at being exposed for a deliberate violation of Appellants' rights, (which is not the Appellants' fault, who have an absolute right to pursue justice), lobbied to keep other judges off the case and arrogantly denied Appellants' "right to be heard" all over again, (AP 71).

The Panel had been caught dead to rights having illegally denied appellants' right to be heard on non-discretionary matters appealed as a matter of "right".

On November 24, 2003 the Panel amended its *Memorandum*, (AP 73), in order to create another procedural façade to cover its violation. The Panel contemporaneously told the rest of the court to ignore the case, denied rehearing, and refused to recuse itself from the case, (AP 71).

The Panel again refused to consider or read any relevant portion of the non-discretionary appealed material, and merely slapped a new paragraph on the beginning and on the end of its

original *Memorandum*. These paragraphs show that not one word of the substantial and copiously well-supported *Motions for Reconsideration* were considered or read. In fact, the two new paragraphs both refer to the case as one of "summary judgment".

The Panel is now literally affirming a judgment that never has, nor ever will, exist!

Amazingly, faced with a major rights violation the Panel chose to add insult to injury.

In the first instance the Panel did not have the fair decency to even check what the Appellants were actually appealing. In the second instance the Panel did not have the decency to even keep track of what case it was bogusly 'fixing'.

Not only does this set of facts provide smoking gun outright proof of Petitioners' charge, it is outright proof of a pattern of willful violation that continues day by day to this point.

Obviously this Panel feels quite safe that no one will hold them to account for their injustice towards lowly, no good, pro se litigants. This is judicial arrogance run amuck, and the integrity of the entire system is on trial here today! If judges can summarily, and with impunity, deny any one side to an issue "the right to be heard", then what's to stop the entire judiciary from destroying the balance of power so brilliantly designed into our system of governance?

Proof

Since both the dismissal *Judgment* and the final *Orders* on reconsideration are appealable on their own separate merits, each is an "appeal as of right". Even if the Panel were brazen enough to attempt to argue that its "*Memorandum*" is proof of an actual fair hearing on the dismissal *Judgment*, its "*Memorandum*" stands as outright proof that no hearing of the final *Orders* occurred in the first instance. Its "*Amended Memorandum*" equally stands as further outright proof of lack of a hearing in the first instance, and outright proof of lack of a hearing in the second instance where the Panel now affirms a judgment that never has nor ever will exist.

Therefore, unless the Panel can show that there is no such thing as an "appeal as of right", they simply have no defense against the charge. It is proven. The Petitioners' charge is valid.

Further, Petitioners contend that even if the Panel agreed now to perform an actual true "hearing" of the case, it would be prejudicial against the Petitioners unless it resulted in a complete reversal as the law has always required. The Panel has been tainted by its own negligence and now has self-interests that run against Petitioners.

Damages

The assigned Panel has officially ruled that the appellants' 18 USC 1962(b) claim, the ORS 166.720(2) claim, and the 18 USC 1962(d) claim are **REVERSED** and **AFFIRMED simultaneously**.

In the District Court's *First Opinion* the court said:

> **"I consider these sufficient allegations for three predicate acts of extortion."** (Emphasis Supplied) (AP 11)

Further, Judge King stated that other acts of extortion **spread over years of time** would be adequately pled by merely stating who did it. (ER 65) This was done. (See *Second Amended Complaint (corrected).*) (ER 84-92)

Judge King also stated several Travel Act violations would be pled by merely stating that the wires were employed in the extortion. (ER 66) This was also done. In fact, transcripts of actual extortion recorded over the phone are included in the *Second Amended Complaint* at ER 86-88 and ER 92-93.

One example of a secret, yet entirely legal recording included in the complaint goes as follows:

> "46. Jackson repeated again his extortionate threats and intimidating Huff in a phone conversation between Huff and Jackson within the State of Oregon on **January 20, 1997**, as follows:
>
> HUFF: **"So, are you saying that this is, that this process of basically forcing somebody to, ah, to come to your terms there, you've done this before?"**

JACKSON: **"No. Only when a guy waived a 45 automatic in my face and I told him if he didn't get the fuck out I'd kill him. (LAUGHING) Okay?"**

HUFF: **"Oh, God."**

JACKSON: **"That's right. (LAUGHING)" "**

In addition, smoking gun perjury is adequately pled at ER 111. Judge King went on to state that incidents of wire fraud, mail fraud, and contract fraud regarding the commercial lease lacked the needed specificity. This was also fully addressed throughout the *Second Amended Complaint*. In fact, a single act of wire fraud now covers nearly an entire page. (ER 97, Lines 9-25 – Page 98, Lines 1-5.)

Viewing Judge King's *Second Opinion* in context with his *First Opinion*, it is the District Court's official position that at a minimum many acts of extortion, coercion, Travel Act violations, perjury, as well as wire fraud, have been adequately pled, spanning years of time, and forming a clear "pattern" way beyond the RICO standard. Former federal prosecutor David Adler addressed this fact in his *Motion for Reconsideration* at AP 35, Section f.

It is clear that no claim was dismissed on the basis that a "pattern" was not alleged. In fact, in all, plaintiffs alleged eight (8) courses of conduct that resulted in illegal control of the victim enterprise that are supported by a massive "pattern" of crime admitted to by the District Court itself.

Judge King invented the super narrow definition of "control" specifically because explaining away eight (8) courses of conduct in light of the clear "pattern" proved simply too daunting a task.

In light of the above, Appellants knew that all that was needed for the case to be REVERSED was for the Appeals Court to declare Judge King's super narrow "control" definition to be erroneous. We also knew that, due to current law and common sense, this desired determination was extremely likely. This is one of many reasons Appellants stated that this case is 100% reversible upon a fair, complete, and actual review.

The Panel's "*Memorandum*" and "*Amended Memorandum*" states the following:

> **"The District Court *erred* in its application of the "control" standard."** (Emphasis Supplied)

Therefore, *at this moment, **between** the final disposition of the **District Court** and that of the **Panel**, **we have a REVERSAL** of two Federal RICO claims and one State ORICO claim.*

At AP 36 former federal prosecutor David B. Adler stated:

> **"The complaint alleges the acquisition of control over ACRO-TECH through a pattern of racketeering, ie. extortion and mail fraud "control" as a noun is defined by Black's Law Dictionary as: 'The ability to exercise a directing or restraining influence over something.'"**

The illegal "control" pled in the *Second Amended Complaint (corrected)* is not limited to and includes:

1. Instilling credible fear of economic oblivion in owner and president of "enterprise" through extortion and Travel Act violations disrupting day to day operation, diverting resources, and causing disruption of capital financing;
2. Threats against multiple board members through coercion, wire fraud, etc., causing dismantling of the board, disruption of day to day operation, diverting resources, and disruption with capital financing;
3. Interfering directly with investors through wire fraud, disrupting capital financing, etc.;
4. Bogus complaints to state agencies, abusing stolen information, disrupting capital financing, diverting resources, etc.;
5. Threatening and carrying out an abuse of the courts through bogus litigation, corruption, obstruction of justice, perjury, and bribing officers of the court, etc., causing complete destruction of enterprise, bankruptcy, wire fraud, mail fraud;
6. Etc.

All the above quintessentially defines interference with interstate commerce and illegal "control" and is clearly recognized by the District Court.

Could a fair minded, conscientious appellate panel simply have missed all of this information?

Taking extortionate threats to the owner and president as an example:

- This is clearly detailed over and over again on the record's key document at ER 77, 84, 85, 86, 87, 88, 89, 90, 90, 91, 92, 93, 102, 104, 105, 107, 109, 114, and 116;
- It can also be found in plaintiff Reggie Huff's *Motion for Reconsideration* at ER 196; (Fully referenced in Appellants' Briefs.)
- And Plaintiff's *Motion for Reconsideration* drafted by former federal prosecutor David Adler at AP 36; (Fully referenced in Appellants' Briefs.)
- It can also be found in *Appellants' Brief* on page 24 and *Appellants' Reply Brief* on pages 5 and 6.
- But most interestingly, it can be found in the District Court's own *First Opinion* at AP 5, 10, 11, & 13. But it is not described in the District Court's *Second* and *Final Opinion*, (AP 20).

Taking the threats to board members, twice resulting in the dismantling of the board, as one more example:

- This is clearly detailed over and over on the record's central document at ER 77, 82, 84, 85, 86, 90, 91, 102, 104, 107, 110, 111, and 116;
- And in the District Court's own *First Opinion* at AP 5 and 11, but it is only barely referenced in the District Court's *Final Opinion* at AP 26.

In all, these critical allegations, which must be taken as true, are detailed on the record before the Panel approximately **42+** times. Literally any semi-conscious judge would not be able to merely glance at the *Second Amended Complaint* or Judge King's *First*

Opinion and not see these allegations. But one could look at Judge King's *Second* and *Final Opinion* and miss them.

The Panel knew that the *vast majority* of civil RICO cases do not have the facts available to form a "pattern" without a fraud element. (See 10 Am. Jur. Proof of Facts 3d-299.)

The Panel also knew that "fraud" has an ambiguous and difficult pleading standard.

Therefore the Panel simply ***assumed*** that it could arbitrarily use the "lack of particularity" issue to knock out a "pattern", which results in affirmation irrespective of the District Court's erroneous "control" definition.

The Panel was completely unaware that the appellants had pled, and the District Court was resigned to the fact, that there was a rare "pattern" completely outside of the fraud element, even while the fraud element was adequately pled as well.

The Panel was "unaware" specifically because it blatantly and repeatedly violated appellants' right to be heard by not even glancing at the key documents, including the District Court's *First Opinion*.

Since the erroneous "control" definition results in **REVERSAL under the law, *combining* the *binding dispositions*** of the District Court and of the Panel, Petitioners have been robbed of a REVERSAL, and therefore damaged by the mere fact that the Panel refused to read *even* the District Court's *First Opinion*, much less the Appellants' submissions. That *Opinion* is referenced throughout the Appellants' case. Clearly, failure to consider or read any relevant portion thereof results in missing justice by a mere whisker.

Petitioners believe that if the Panel had heard any relevant portion of the case it would have reversed. It is almost as if they did not want to be exposed to anything that might force them to reverse, so they simply ignored the entire case.

CONCLUSION

It is clear now that the Appellate Panel did not read any relevant portion of the District Court's *First Opinion,* despite the fact that there are self-evident contradictions in the *Second Opinion.* The Appellate Panel also refused to expose itself to oral argument after it was already on the court's docket.

The ironic and disturbing fact is that if the Panel had simply performed one of these miniscule tasks this entire issue would have been avoided.

We met all statutory requirements. We paid our court fees, and waited over two (2) years. We have a "right" to be heard. These miniscule tasks are hardly unreasonable demands.

WRIT OF MANDAMUS AS REMEDY

- PRAYER -

In light of the extraordinary circumstances detailed in this *Petition* and the overall record, and for good cause shown, Petitioners respectfully request that this court issue, as it deems appropriate, a (non-binding) advisory note encouraging immediate appropriate and complete corrective action by the subject Ninth Circuit Panel in advance of issuance of a Writ.

Upon this court's fair determination that such "corrective action" is not forthcoming, is incomplete, ineffectual, or inappropriate, Petitioners respectfully request that this court please issue a *Writ of Mandamus* compelling Respondents to recall their mandate in 9th Circuit Court Case No. 02-35176, and immediately order a full "rehearing" of said case, and, subsequently, the recusal of the assigned 9th Circuit Court Panel of Judges, namely the Honorable **Susan P. Graber, Ronald M. Gould,** and **Ruggero J. Aldisert**, from said case.

Further, Petitioners respectfully request this court please request or compel, as it deems appropriate, the new panel or the 9th Circuit Court to allow for oral argument and to issue an opinion in

the above case upon proper final disposition, in order to protect Petitioners right to be heard.

Further, Petitioners respectfully request that this court please request or compel, as it deems appropriate, the new panel or the 9th Circuit to give the said case priority, in order to mitigate prejudice against Petitioners.

Further, Petitioners respectfully request that this court please take such other action as it deems necessary to protect Petitioners' legal and constitutional rights.

Respectfully submitted this 23rd day of January 2004.

Reggie D. Huff
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Counsel for Petitioners

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2003

No. _____

"In re
REGGIE D. HUFF AND LISA G. HUFF

Petitioners"

v.

SUSAN P. GRABER, RONALD M. GOULD
AND RUGGERO J. ALDISERT,
Circuit Court Judges for the 9th Circuit

Respondents

THE ROBERT JACKSON FAMILY TRUST; L. B. LAND, an Oregon corp.; JDH SERVICES INC., an Oregon corp.; JOHN D. HALLSWORTH, JR.;ROBERT K. JACKSON; LUANN JACKSON; RODERICK A. BOUTIN,

Co- Respondents

AFFIDAVIT IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AGAINST 9th CIRCUIT PANEL

(Oral Arguments Requested)
(Expedited Procedure Requested)

Reggie D. Huff & Lisa G. Huff
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Warren, OH 44482
Ph: (330)372-6615; Fax: (330)372-6316
Counsel for Petitioners

State of Ohio }
} ss
County of Trumbull }

Being first duly sworn I do depose and say that:

1. I am a Petitioner in the above case and cause.
2. I am the sole author of the *Petition to Appoint Independent Committee to Investigate Charges of Illegal Discrimination Upon class of People by Ninth Circuit, and Petition to Suspend Judges Graber, Gould, and Aldisert Pending Disposition of Charges and/or Petition for Rehearing* that was submitted by me and Lisa G. Huff on October 14, 2003 to the Ninth Circuit Court.
3. I did so because I believe the charges and facts within said *Petition* are accurate. Therefore I believed sincerely that anything less provocative would be completely ignored.
4. I believe Lisa G. Huff and myself were forced to bring the charges in the said *Petition* by the conduct of others that we did not entice, affect, induce, encourage, or deserve in any shape, manner, or form.
5. I am the sole author of the *Petition for Writ of Mandamus Against Ninth Circuit Panel.*
6. I believe Lisa G. Huff and myself were forced to bring the charges in the said *Writ* by the conduct of others that we did not entice, affect, induce, encourage, or deserve in any shape, manner, or form.
7. All of the information contained within said *Petition* for "*Writ...* " is true and accurate to the best of my knowledge.
8. I did in fact attend oral argument hearing in the Mark Hatfield Federal Courthouse Building in Portland, Oregon on September 12, 2003.
9. I did in fact witness Susan P. Graber acting as presiding judge express verbally her desire to end oral arguments early.

10. I did in fact witness the manner and demeanor of the accompanying Panel Judges, namely Judges Gould and Aldisert, on that day.
11. I have brought this Writ proceeding for a good and proper purpose, to prosecute what amounts to ongoing criminal conduct in the underlying case for myself, my family, my company, its approximately 150 investors, and for the community at large, to promote justice and integrity in our legal system and uphold Congress' intent for the civil provision of RICO and not for needless or unfair delay.

The above is true as I verily believe.

Reggie D. Huff

Reggie D. Huff

Subscribed and sworn to before me this 23rd day of January 2004.

Debra L. Gutierrez

NOTARY PUBLIC FOR OHIO DEBRA L. GUTIERREZ

My commission expires: 9-10-2008